IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPLICATION NO.191 OF 2000

The Commissioner of Income Tax,
Mumbai City III, Mumbai, 3rd
Floor, Aayakar Bhavan, M.K.
Marg, Mumbai - 400 020. ..Applicant.

V/s.

The Maharashtra State Co-operative
Bank Ltd., C/o. Dalal & Shah, C.A.s
49-55, Mumbai Samachar Marg, Fort,
Mumbai - 400 023. ..Respondent.

Dr.P.Daniel with A.S.Rao i/b. R.N.Bandopahyay for applicant.

CORAM : V.C. DAGA AND J.P.DEVADHAR, JJ.

DATED : 16TH AUGUST, 2005.

ORAL JUDGMENT (PER V.C.DAGA, J.)

1. Heard the learned counsel for the applicants. This is application under section 256(2) of the Income Tax Act, 1961 ('the Act' for short) for A.Y.1994-95. The return filed by the respondent was processed under section 143(1) (a) and the claim of the respondent in respect of deduction under section 80P (2)(a)(i) was allowed.

2. The assessing officer, subsequent to the above decision, having noticed the Judgment of the Apex Court in the case of **Madhya Pradesh Co-op.Bank Ltd.**

[218 I.T.R. 438], issued a notice under section 148 to the respondent-assessee which was served on the respondent-assessee on 16/1/1997.

3. The reassessment pursuant to above notice was completed under section 143(3) read with section 148 on 21/2/1997. The deduction under section 80P(2)(a)(i) claimed by the assessee with respect to interest received on Government securities earmarked against statutory reserve fund came to be disallowed.

4. The respondent-assessee had impugned the above order of reassessment passed by the assessing officer in appeal filed before the Commissioner of Income Tax (Appeals). The C.I.T.(A) directed the assessing officer to restrict the disallowance only to interest relatable to Government securities which forms part of reserve fund.

5. The respondent-assessee not being satisfied with the above part of the order impugned the order passed by the Commissioner of Income Tax (Appeals) in the appeal being appeal No.7115/Mum/1997 filed before the Income Tax Appellate Tribunal, Mumbai Bench D, Mumbai.

6. The Tribunal by its order dated 12th August,

1998 allowed the above appeal holding that Rule 54(1) of the Maharashtra Co-operative Societies Rules does not apply in the case of the respondent as the assessee is covered under section 70(b) of the Maharashtra Co-operative Societies Act, 1960. The Tribunal held that the respondent-assessee is not within the scope of Rule 54(2) of the Maharashtra Co-operative Societies Rules. The Tribunal held that the reassessment is invalid because notice under section 148 of the Act was issued beyond time prescribed under section 148 of the Act.

7. The Revenue not being satisfied with the above order of the Tribunal had moved an application under section 256(1) of the I.T. Act with a prayer to refer question of law for the opinion of this Court. This prayer of the Revenue did not find favour with the Tribunal.

8. The Revenue has now moved this application underm section 256(2) with a prayer that the Tribunal be directed to state the case and refer the question of law arising out of the order of the Tribunal dated 12th August, 1998 to this Court for decision. That is how the Revenue is now seeking directions against Tribunal. The questions of law raised at the instance of the Revenue are as under :-

1. Whether on the facts and in the circumstances of the case, the ITAT was justified in holding that the interest on Government Securities earmarked for statutory reserve fund was a part of banking business and accordingly the assessee is eligible for deduction u/s.80P (2)(a)(i) of the I.T. Act, 1961 ?

2. Whether on the facts and in the circumstances of the case, the ITAT was justified in cancelling levy of interest u/s.234B of the I.T. Act, 1961 ?

9. The learned counsel appearing for the revenue fairly brought to our notice that the Judgment of the Apex Court in the case of **Commissioner of Income -Tax V/s. Karnataka State Co-operative Apex Bank (2001) 251 I.T.R.194 (S.C.)**, wherein the Apex Court held that interest arising from investment made, in compliance with statutory provisions to enable it to carry on banking business, out of reserve fund by a co-operative society engaged in banking business, is exempt under section 80P(2)(a)(i) of the Act. In this view of the Judgment of the Apex Court, we do not see any reason to issue directions to the Tribunal to set out the case. The application is without any merits. So far as the second question is concerned it being consequential, the same will be covered by the Judgment of the Apex Court.

10. Application stands disposed of accordingly with no order as to costs.

(V.C. DAGA, J.)

(J.P.DEVADHAR, J.)